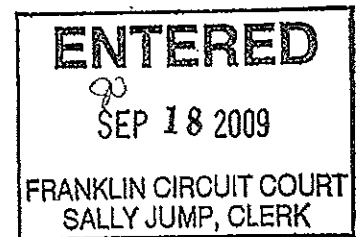


COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION I  
CIVIL ACTION NO. 06-CI-1486



DEPARTMENT OF FINANCIAL INSTITUTIONS

PETITIONER

V.

ORDER

KINGDOM OIL, INC.  
and  
ERNEST CADICK

RESPONDENTS

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This matter is before the Court on the motion of the Petitioner, Department of Financial Institutions ("DFI"), to hold the Respondent, Ernest Cadick, in contempt of court for violation of this Court's Order entered on October 30, 2006 which incorporated the Settlement Agreement which the parties entered into on August 25, 2006. The Court having considered the arguments of counsel and being otherwise sufficiently advised, hereby GRANTS the Motion to hold the Respondent in contempt and hereby imposes upon Respondent, Ernest Cadick, a sentence of 180 days incarceration with a bond of \$20,000.00 full cash.

**Background**

To date, DFI has filed numerous Motions with this Court to hold the Respondent in contempt of Orders of this Court. The Court has consistently allowed the Respondent additional time to comply with his payment obligations pursuant to its Orders. On April 12, 2007, this Court ordered the Respondent to pay five hundred dollars (\$500.00) per month into the escrow account of Respondents' attorney. Having failed to keep up with this payment obligation, the Court entered an Order on January 16, 2008, requiring the

Respondent to transfer three thousand dollars (\$3,000.00) to DFI within ten (10) days of entry of the Order. On September 29, 2008, the Court found the Respondent in contempt of the January 16, 2008 Order, due to the Respondent having continually failed to make the required payments to DFI under the Settlement Agreement in a timely fashion. The September 29, 2008 Order gave Respondent ninety (90) days to purge himself of contempt by making the required \$500 per month payments under penalty of being placed under arrest for contempt if this requirement had not been met at the end of the 90-day period.

On October 21, 2008, this Court clarified its previous Order by indicating that the Respondent needed to cure all past due defaults in payments required under the Court's prior orders AND continue to make the payments due for October, November, and December, 2008, in order to purge himself of the contempt finding by the end of the 90-day period. The Respondent was able to purge himself of the contempt finding by meeting these requirements, however he nearly immediately began to repeat his past behavior by failing to meet his 2009 payment obligations in a timely fashion. Subsequently, on August 10, 2009, DFI moved this Court to hold the Respondent in contempt not only for failure to make prompt restitution payments pursuant to the Settlement Agreement but also for engaging in the marketing and/or sale of securities in violation of the October 30, 2006 Order. The Order incorporated the above-referenced Settlement Agreement between DFI and the Respondents which expressly provided "that should Ernest Cadick...desire to sell any investments or to solicit funds for investment purposes, he shall have the prior approval of the Director of the Division of Securities of the Office of Financial Institutions before offering or selling any such security." The

Settlement Agreement further provided that compliance with its provisions was "subject to the contempt powers of the judiciary."

### **Discussion**

As expressed in *Young v. Knight*, 329 S.W.2d 195 (Ky. 1959), a court has the right to invoke its contempt power in enforcing a judgment and the power to punish for contempt is an essential and inherent attribute of judicial authority.

This Court has consistently given the Respondent additional time to meet his legal obligations under the Settlement Agreement. There is uncontested testimony in the record, most recently at the Show Cause Hearing of September 9, 2009, that the Defendant has not been meeting his payment obligations under this Court's Orders in a timely manner. Further, DFI presented uncontested evidence on September 9, 2009, that the Respondent has continued to take advantage of innocent citizens by soliciting funds for investment purposes without the prior approval of the DFI Director of the Division of Securities in violation of the Order incorporating the Settlement Agreement. The Respondent, Ernest Cadick, chose not to testify in the Show Cause Hearing and indeed has a 5<sup>th</sup> Amendment right to make such a choice, however he has further failed to produce a single witness to contest DFI's allegations that he has engaged in a transaction that is inconsistent with his court-ordered obligations.

Specifically, in the Hearing of September 9, 2009, Patsy Wells testified that Respondent Cadick had solicited her husband and herself, along with Hugh and June Gabbard, to give him some money for investment purposes. The Affidavit of Chad Harlan, Certified Financial Institution Examiner in the Enforcement Branch of the Division of Securities within DFI, states that he learned of this occurrence in the course

of his investigation of the Respondents. Harlan states that he learned that, in November, 2008, the Respondent solicited the Gabbards and the Wells to invest money with him for the purpose of gaining a return and protecting assets from a faltering economy. A criminal complaint was subsequently filed with the Louisville Metro Police against Respondent Cadick by Hugh Gabbard and Charles and Patsy Wells on June 30, 2009, alleging that Cadick had solicited a total of \$19,500.00 from them. Ms. Wells testified in this Court's September 9, 2009, Hearing that she and her husband had invested \$10,000.00 with Respondent Cadick but that they had yet to have any of this money returned to them, despite repeated demands to refund this money. This Court is persuaded that this behavior on the part of the Respondent is in violation of the October 30, 2006, Order prohibiting the solicitation of funds for investment purposes without the prior approval of DFI.

The Supreme Court decision in *SEC v. W.J. Howey*, 328 U.S. 293 (1946) asserts that there are four key elements to an investment contract: (1) the investment of money, (2) in a common enterprise, (3) with the expectation of profit, and (4) the profit to come solely or substantially through the efforts of others. Clearly, Cadick's behavior in November, 2008, as indicated by the uncontested evidence put forth by DFI in the September 9, 2009, Hearing, involves an investment of money on the part of the Wells and the Gabbards, a common enterprise between them and Respondent Cadick who led them to believe that he would deliver a return on the money that he received from them, an expectation of profit by those who invested the money, and the purported profit was to come solely or substantially through Respondent Cadick's efforts. Therefore, it is clear to the Court that Cadick solicited funds for investment purposes in November, 2008. The


September 17, 2009, Affidavits of Shonita Bossier, Director of the Division of Securities of DFI, and Rebecca Conley, Licensing and Registrations Branch Manager of the Division of Securities of DFI, indicate that Respondent Cadick did not seek and has not obtained the prior approval or permission of the Director of the Division of Securities or any other person employed by the Licensing and Registration Branch of the Division of Securities to offer or sell any security.

**Conclusion**

Due to the Respondent's violation of this Court's Orders and the Respondent's repeated inability to comply with his court-ordered obligations, as well as the Court's concern that Respondent poses a risk to the public even while under Order not to sell or offer securities or investment contracts, this Court finds it necessary to sentence the Respondent to 180 days incarceration with a \$20,000.00 full cash bond. It would be futile for this Court to further impose a monetary obligation on the Respondent due to his consistent failure to honor such an obligation.

This is a final and appealable order and there is no just cause for delay.

SO ORDERED this 18<sup>th</sup> day of September, 2009.

  
PHILLIP J. SHEPHERD, JUDGE  
Franklin Circuit Court, Division I

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